



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 19, 2014

Mr. Jonathan Miles  
Open Government Attorney  
Texas Department of Family and Protective Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2014-03040

Dear Mr. Miles:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 514359 (DFPS ORR Request No. 11182013XJW).

The Texas Department of Family and Protective Services (the "department") received a request for the requestor's personnel file, including information pertaining to two named employees. You state the department will redact certain information pursuant to section 552.136(c) of the Government Code and Open Records Letter No. 684 (2009).<sup>1</sup> You indicate the department will release some of the requested information. You claim some of the submitted information is excepted from disclosure under section 552.101 of the

---

<sup>1</sup>Section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. *See* Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). *See id.* § 552.136(d), (e). Open Records Decision No. 684 is a previous determination to all governmental bodies authorizing them to withhold certain categories of information, including I-9 forms under section 552.101 of the Government Code in conjunction with section 1324a of title 8 of the United States Code, without the necessity of requesting an attorney general opinion. *See* ORD 684 at 14.

Government Code. We have considered the exception you claim and reviewed the submitted representative sample of information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov’t Code § 552.101. This exception encompasses information that other statutes make confidential. Section 40.005 of the Human Resources Code authorizes the department to adopt rules for the purpose of preserving the confidentiality of information concerning child abuse and neglect and provides in part:

(a) The department shall establish and enforce rules governing the custody, use, and preservation of the department’s records, papers, files, and communications.

(b) The department shall prescribe safeguards to govern the use or disclosure of information relating to a recipient of a department service or to an investigation the department conducts in performing its duties and responsibilities. The safeguards must be consistent with the purposes of the department’s programs and must comply with applicable state and federal law and department rules.

Hum. Res. Code § 40.005(a)–(b). In accordance with section 40.005, the department promulgated section 745.8485 of title 40 of the Texas Administrative Code to make child care facility license investigations confidential. Section 745.8485 provides in part:

(c) The following information relating to a completed investigation of child abuse or neglect is confidential and not available to the general public, except as provided under this chapter and applicable federal or state law:

(1) The description of the allegation of child abuse or neglect;

(2) The identity of the person making the allegation; [and]

(3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation[.]

---

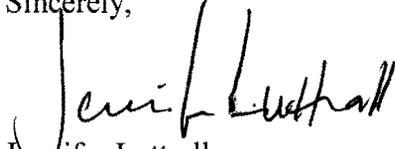
<sup>2</sup>We assume the “representative sample” of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain substantially different types of information than that submitted to this office.

40 T.A.C. § 745.8485(c)(1)–(3). You represent to this office the information you have marked is related to investigations of alleged child abuse or neglect at licensed child care facilities, so as to be confidential under section 745.8485(c). You also state the information at issue is not subject to disclosure under the provisions of chapter 745 of title 40 of the Texas Administrative Code that govern information that must be maintained in the department's monitoring files. *See id.* §§ 745.8481 (information in monitoring file is for most part available to general public), .8487 (department may release to public only those portions of abuse or neglect investigation record that must be filed in monitoring file), .8489 (except for certain specified information, department will maintain all records of abuse or neglect investigation separate from monitoring file). Based on your representations and our review, we find the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with section 745.8485(c) of title 40 of the Texas Administrative Code. As you raise no other exceptions to disclosure, the remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Jennifer Luttrall  
Assistant Attorney General  
Open Records Division

JL/som

Ref: ID# 514359

Enc. Submitted documents

c: Requestor  
(w/o enclosures)